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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

ADAM SHAW, PETER GOLIGHTLY,  
 JUSTIN TURNER and JOSHUA  
 STANSFIELD as individuals and on behalf  
 of all others similarly situated and the  
 general public,

Plaintiffs,

v.

WIZARDS OF THE COAST, LLC,

Defendant.

Case No.: 5:16-cv-01924  
 Hon. Edward J. Davila

**PLAINTIFFS' OPPOSITION TO MOTION TO  
 DISMISS SECOND AMENDED COMPLAINT**

Date: Sept. 20, 2018  
 Time: 9:00 a.m.  
 Crtm: 4, 5<sup>th</sup> Floor

## OPPOSITION

### **1. PRELIMINARY STATEMENT**

Defendant's motion to dismiss is based entirely on the premise that the Second Amended Complaint ("SAC") filed by Plaintiffs in this matter fails to allege facts regarding *where* each named Plaintiff performed work on behalf of the Defendant. To wit, Defendant alleges that as to the SAC's First Cause of Action "only one of the 19 Plaintiffs alleges that he performed work for Wizards in the United States" [Motion to Dismiss ("MTD") 1:24 - 2:2] (Dckt No. 75), and that as to the SAC's Second through Tenth Causes of Action, "none of the now 19 Plaintiffs allege that they were employed by or otherwise performed work for Wizards in the state of California." *Id.* Plaintiffs submit that to the extent the Court agrees that Defendant's proffered factual specificity is required pursuant to FRCP 8, Plaintiffs should be permitted to amend to include specific allegations regarding the location of work performed on Defendant's behalf by each named Plaintiff – i.e. in California and throughout the United States.

### **2. PLAINTIFFS DO NOT INTEND TO ABROGATE THE GENERAL RULE THAT CALIFORNIA LABOR LAW DOES NOT APPLY EXTRATERRITORIALLY**

Defendant's MTD points out that California labor law does not generally apply to jurisdictions outside of California, a point not contested by the Plaintiffs herein. To the contrary, the named Plaintiffs, *inter alia*, performed work that benefitted the Defendant in various jurisdictions throughout the United States, including California. Accordingly, Plaintiffs are entitled to pursue the First Cause of Action as to work performed in the United States, and are entitled to pursue the Second through Tenth Causes of Action as to work performed in California. Plaintiffs must be permitted to amend the complaint to include the necessary allegations regarding where each performed work on Defendant's behalf.

### **3. IT IS THE POLICY OF THE FEDERAL COURTS TO LIBERALLY PERMIT AMENDMENTS**

The Federal Rules of Civil Procedure provide a liberal policy for amending pleadings. Under Rule 15(a), leave to amend a party's pleadings "shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). Federal Rule of Civil Procedure 15(a)(2) states "[t]he court should freely give leave [to amend pleadings] when justice so requires" and the Ninth Circuit has "stressed Rule 15's policy of favoring amendments." *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th

1 Cir.1989). “In exercising its discretion [to grant leave to amend] ‘a court must be guided by the  
 2 underlying purpose of Rule 15—to facilitate decision on the merits rather than on the pleadings or  
 3 technicalities.’” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (quoting  
 4 *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.1981)).

5 **4. DEFENDANT WILL NOT BE PREJUDICED BY AN ORDER PERMITTING**  
 6 **AN AMENDED PLEADING**

7 There are no dispositive motions pending in this action and discovery is still open. While it is  
 8 evident from the prior versions of the complaint and the FRCP 216(b) motion for conditional  
 9 certification briefing that Defendant is and has been on notice that Plaintiffs allege they have  
 10 performed work on Defendant’s behalf in the United States, including in California, Plaintiffs are  
 11 prepared to amend to include the necessary facts as to the location of work they performed. Notably,  
 12 Plaintiffs do not intend to add new parties or claims, but merely to satisfy pleading standards for the  
 currently plead claims. Certainly, adding facts as to the location of work performed by the named  
 Plaintiffs does not impose any undue burden on the Defendant.

13 **5. CONCLUSION**

14 For the reasons set forth herein, Plaintiffs respectfully request this Court permit the filing of an  
 15 amended complaint to provide additional factual allegations regarding the location of work performed  
 16 by the named Plaintiffs.

17 Dated: July 3, 2018

By: /s/ Ross Cornell

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